HOUSE BILL 313
EMERGENCY BILL

Unofficial Copy 2003 Regular Session
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By: **Delegate Jones**
Introduced and read first time: January 31, 2003
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 4, 2003

CHAPTER 138

AN ACT concerning

Child Support Enforcement - Financial Institution - Definition

FOR the purpose of altering the definition of financial institution in a provision requiring a financial institution to provide certain information and assistance to the Child Support Enforcement Administration; providing for the construction of a certain reference for certain purposes; establishing that an institution-affiliated party is not required to provide certain information or assistance to the Administration under certain circumstances; providing certain immunity from civil liability or criminal penalty for an institution-affiliated party; defining a certain term; making this Act an emergency measure; and generally relating to child support enforcement.

BY repealing and reenacting, with amendments,
Article - Family Law
Section 10-108.2, 10-108.3, and 10-108.4
Annotated Code of Maryland
(1999 Replacement Volume and 2002 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Family Law

10-108.2.

(a) (1) [In] EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, IN this section and in [§ 10-108.3] §§ 10-108.3 AND 10-108.4 of this [subtitle] SUBTITLE, the following words have the meanings indicated.

(2) (i) "Account" means:

1. any funds from a demand deposit account, checking account, negotiable order of withdrawal account, savings account, time deposit account, money market mutual fund account, or certificate of deposit account;

2. any funds paid towards the purchase of shares or other interest in a financial institution, as defined in paragraph (4)(ii) and (iii) of this subsection; and

3. any funds or property held by a financial institution, as defined in paragraph (4)(iv) of this subsection.

(ii) "Account" does not include:

1. an account or portion of an account to which an obligor does not have access due to the pledge of the funds as security for a loan or other obligation;

2. funds or property deposited to an account after the time that the financial institution initially attaches the account;

3. an account or portion of an account to which the financial institution has a present right to exercise a right of setoff;

4. an account or portion of an account that has an account holder of interest named as an owner on the account; or

5. an account or portion of an account to which the obligor does not have an unconditional right of access.

(3) "Account holder of interest" means any person, other than the obligor, who asserts an ownership interest in an account.

(4) "Financial institution" means:

(i) a depository institution, as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c);

(II) AN INSTITUTION-AFFILIATED PARTY, AS DEFINED IN THE FEDERAL DEPOSIT INSURANCE ACT AT 12 U.S.C. § 1813(U);

[(ii)] (III) a federal OR STATE credit union, as defined in the Federal Credit Union Act at 12 U.S.C. § 1752;

[(iii)] (IV) a State credit union regulated under Title 6 of the Financial Institutions Article; [or]

(V) AN INSTITUTION-AFFILIATED PARTY, AS DEFINED IN THE FEDERAL CREDIT UNION ACT AT 12 U.S.C. § 1786(R); OR

[(iv)] (VI) a benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity doing business in the State that holds property or maintains accounts reflecting property belonging to others.

(B) FOR PURPOSES OF SUBSECTION (A)(4)(V) OF THIS SECTION, ANY REFERENCE TO "INSURED CREDIT UNION" AT 12 U.S.C. § 1786(R) SHALL BE CONSTRUED TO INCLUDE A CREDIT UNION INSURED IN ACCORDANCE WITH § 6-701(A)(2) OF THE FINANCIAL INSTITUTIONS ARTICLE.

[(b)] (C) To carry out the purposes of this section, the Administration may request from any financial institution information and assistance to enable the Administration to enforce the liability of a parent to support a child of the parent.

[(c)] (D) (1) The Administration may request not more than four times a year from a financial institution the information set forth in subsection [(d)(2)] (E)(2) of this section concerning any obligor in arrears in paying child support through a support enforcement agency.

(2) A request for information by the Administration under paragraph (1) of this subsection shall:

(i) contain:

1. the full name of the obligor and any other names known to be used by the obligor; and

2. the Social Security number or other taxpayer identification number of the obligor; and

(ii) be transmitted to the financial institution in an electronic format unless the financial institution specifically asks the Administration to submit the request in writing.

[(d)] (E) (1) Within 30 days after a financial institution receives a request for information under subsection [(c)] (D) of this section, the financial institution shall:

(i) notify the Administration that the financial institution submits reports indirectly through the Federal Parent Locator Service under 42 U.S.C. § 666(a)(17); or

(ii) with respect to each obligor whose name the Administration submitted to the financial institution and who maintains an account with the financial institution, submit a report to the Administration.

(2) The report described in paragraph (1)(ii) of this subsection shall contain, to the extent reflected in the records of the financial institution:

(i) the full name of the obligor;

(ii) the address of the obligor;

(iii) the Social Security or other taxpayer identification number of the obligor;

(iv) any other identifying information needed to assure positive identification of the obligor; and

(v) for each account of the obligor, the obligor's account number and balance.

(3) A report submitted under paragraph (1)(ii) of this subsection shall be provided to the Administration in machine readable form.

(4) The Administration shall pay the financial institution a reasonable fee, not to exceed the actual costs incurred by the financial institution to comply with the requirements of this section and § 10-108.3 of this subtitle including costs for:

(i) compiling and providing reports to the Administration;

(ii) compiling and providing reports through the Federal Parent Locator Service, but in such a case the actual costs of the financial institution shall be based on a percentage of the financial institution's total actual cost, which percentage shall be determined by dividing the total number of accounts maintained by the financial institution in Maryland by the total number of accounts maintained by the financial institution for all jurisdictions included in the report; and

(iii) necessary upgrades to existing computer, software, or other data compilation systems that are directly related to compliance with the requirements of this section and § 10-108.3 of this subtitle.

(5) The Administration may institute civil proceedings to enforce this section.

[(e)] (F) A financial institution that complies with a request from the Administration by notifying the Administration or submitting a report to the Administration in accordance with subsection [(d)] (E) of this section is not liable under State law to any person for any:

(1) disclosure of information to the Administration under this section; or

(2) other action taken in good faith to comply with the requirements of this section.

(G) AN INSTITUTION-AFFILIATED PARTY, AS DEFINED IN SUBSECTION (A)(4)(II) AND (V) OF THIS SECTION, IS NOT REQUIRED TO PROVIDE INFORMATION AND ASSISTANCE UNDER THIS SECTION IF THE FINANCIAL INSTITUTION WITH WHICH THE PARTY IS AFFILIATED HAS OTHERWISE PROVIDED THE REQUIRED INFORMATION OR ASSISTANCE.

10-108.3.

(A) (1) IN THIS SECTION AND IN § 10-108.4 OF THIS SUBTITLE, "FINANCIAL INSTITUTION" MEANS:

(I) A DEPOSITORY INSTITUTION, AS DEFINED IN THE FEDERAL DEPOSIT INSURANCE ACT AT 12 U.S.C. § 1813(C);

(II) A FEDERAL OR STATE CREDIT UNION, AS DEFINED IN THE FEDERAL CREDIT UNION ACT AT 12 U.S.C. § 1752;

(III) A STATE CREDIT UNION REGULATED UNDER TITLE 6 OF THE FINANCIAL INSTITUTIONS ARTICLE; OR

(IV) A BENEFIT ASSOCIATION, INSURANCE COMPANY, SAFE DEPOSIT COMPANY, MONEY MARKET MUTUAL FUND, OR SIMILAR ENTITY DOING BUSINESS IN THE STATE THAT HOLDS PROPERTY OR MAINTAINS ACCOUNTS REFLECTING PROPERTY BELONGING TO OTHERS.

(2) IN THIS SECTION AND IN § 10-108.4 OF THIS SUBTITLE, "FINANCIAL INSTITUTION" DOES NOT INCLUDE AN INSTITUTION-AFFILIATED PARTY, AS DEFINED IN § 10-108.2(A)(4)(II) AND (V) OF THIS SUBTITLE.

[(a)] (B) (1) If an obligor identified in a report submitted under Section 10-108.2 of this subtitle or in a report made to the Federal Parent Locator Service under 42 U.S.C. § 666(a)(17) is $500 or more in arrears of a child support obligation and has not paid child support for more than 60 days, the Administration may institute an action to attach and seize the amount of the arrearage in one or more of the accounts of the obligor with a financial institution to satisfy the amount of arrearage owed by the obligor.

(2) Before attaching and seizing the obligor's accounts, the Administration shall send a notice to the obligor at the obligor's last known address advising the obligor of the enforcement actions that may be taken, including that the obligor's accounts may be subject to garnishment for payment of a child support arrearage.

[(b)] (C) (1) If the Administration institutes an action against an obligor under subsection [(a)] (B) of this section, the Administration shall send a notice to the financial institution in which one or more of the obligor's accounts are located, by certified mail, return receipt requested, or by other method acceptable to the financial institution, at the address designated for this purpose by the financial institution or, if no address has been designated, to the principal office of the financial institution.

(2) The notice shall contain the following information, to the extent known by the Administration:

(i) the address of the Administration;

(ii) the telephone number, address, and name of a contact person at the Administration;

(iii) the name and Social Security number or other taxpayer identification number of the obligor;

(iv) the address of the obligor;

(v) for each account of the obligor, the obligor's account number and known balance with the financial institution;

(vi) the amount of arrearage that the financial institution shall seize and attach from one or more of the accounts of the obligor; and

(vii) a statement instructing the financial institution to immediately attach and seize the amount of arrearage stated in item (vi) of this paragraph from one or more of the accounts of the obligor and, upon subsequent notice by the Administration, to forward the amount to the Administration.

[(c)] (D) (1) On receipt of the notice under subsection [(b)] (C) of this section, the financial institution shall promptly seize and attach from one or more of the accounts identified in the Administration's notice to the financial institution an aggregate amount equal to the lesser of the amounts in all accounts or the amount stated in the notice.

(2) Not later than 30 days after the financial institution receives the notice directing it to seize and attach accounts of the obligor, the financial institution shall send notice to the Administration by regular mail specifying the aggregate amount held under this subsection.

(3) If an account that has been seized and attached is maintained by the obligor with one or more account holders of interest as reflected on the records of the financial institution, the financial institution's notice to the Administration shall state that fact and shall provide, to the extent reflected in the financial institution's records, the name and address of the other person or persons.

(4) (i) The financial institution may assess a fee against the accounts or the obligor, in addition to the amount identified in the notice under subsection [(b)] (C) of this section.

(ii) In the case of insufficient funds to cover both the fee and the amount identified in the notice under subsection [(b)] (C) of this section, the financial institution may first deduct and retain the fee from the amount seized and attached as provided in this section.

(5) The financial institution may not be held liable to any person, including the Administration, the obligor, or any person named on the account, for wrongful dishonor or for any other claim relating to the seizure and attachment of the account or other actions taken in compliance with this section.

[(d)] (E) (1) Within 2 days after the Administration has received the return receipt from the notice sent to the financial institution under subsection [(b)] (C) of this section, the Administration shall promptly send a notice to the obligor, by regular mail, to the obligor's last known address, or if the home address is not known, to the place of last known employment.

(2) The notice shall contain the following information, to the extent known by the Administration:

(i) the address of the Administration;

(ii) the telephone number, address, and name of a contact person at the Administration;

(iii) the name and Social Security number or other taxpayer identification number of the obligor;

(iv) the address of the obligor;

(v) for each account of the obligor, the obligor's account number and known balances with the financial institution;

(vi) the total amount of the arrearage owed by the obligor;

(vii) the date the notice is being sent;

(viii) a statement informing the obligor that the Administration has directed the financial institution to seize and attach the amount of the arrearage owed by the obligor from one or more of the accounts of the obligor and, upon subsequent notice by the Administration, to forward the amount to the Administration; and

(ix) a statement informing the obligor that, unless a timely challenge is made to the Administration by the obligor or an account holder of interest under subsection [(g)] (H) of this section, the Administration shall notify the financial institution to forward the amount seized and attached by the financial institution to the Administration.

[(e)] (F) If a timely challenge is not made by the obligor or an account holder of interest under subsection [(g)] (H) of this section, the Administration shall send a notice to the financial institution, in the manner specified in subsection [(b)] (C) of this section, directing the institution to forward the amount seized and attached by the financial institution to the Administration.

[(f)] (G) The Administration shall apply the amount seized and forwarded by the financial institution to the obligor's child support arrears. If the obligor has more than one child support case with arrears, the Administration shall allocate the amount received among one or more of the obligor's cases, as determined appropriate by the Administration.

[(g)] (H) (1) An obligor or an account holder of interest may challenge the actions of the Administration under this section by:

(i) filing a request for an investigation with the Administration; or

(ii) filing a motion with the circuit court.

(2) A challenge under paragraph (1)(i) of this subsection shall:

(i) be in writing;

(ii) be received by the Administration within 30 days from the date of the notice under subsection [(d)] (E) of this section;

(iii) be sent to the contact person identified in the notice sent to the obligor under subsection [(d)] (E) of this section; and

(iv) specify, in detail, the reasons for the challenge.

(3) An obligor or account holder of interest may not challenge the actions of the Administration on issues related to visitation, custody, or other matters not related to an account.

(4) An obligor or an account holder of interest may challenge the actions of the Administration based on an exemption in § 11-504 or § 11-603 of the Courts Article or for any other good cause.

[(h)] (I) (1) Upon receipt of a challenge under subsection [(g)] (H) of this section, the Administration shall review the challenge in accordance with this subsection.

(2) The Administration shall release or reduce the amount seized and attached by the financial institution for a mistake of fact, including:

(i) a mistake in the identity of the obligor;

(ii) a mistake in the ownership of an account;

(iii) a mistake in the contents of an account;

(iv) a mistake in the amount of arrearage due; or

(v) any other good cause.

(3) The Administration shall release or reduce the amount seized and attached by the financial institution if the account is exempt under § 11-504 or § 11-603 of the Courts Article or for any other good cause.

(4) The Administration shall send a notice to the financial institution, in the manner specified in subsection [(b)] (C) of this section, directing the financial institution to release the amount seized and attached by the financial institution if

the Administration determines that a mistake of fact has occurred, the account is exempt under § 11-504 or § 11-603 of the Courts Article, or other good cause exists.

(5) The Administration shall send a notice to the financial institution, in the manner specified in subsection [(b)] (C) of this section, directing the financial institution to reduce the amount seized and attached to the revised amount stated and to release the excess amount if the Administration determines that:

(i) the amount owed by the obligor is less than the amount originally indicated on the notice under subsection (b) of this section;

(ii) the obligor does not have an ownership interest in one or more of the accounts seized and attached or a portion thereof; or

(iii) the account or a portion of the account is exempt under § 11-504 or § 11-603 of the Courts Article or other good cause exists.

[(i)] (J) (1) The Administration shall send by regular mail a notice of its findings, including a finding of no mistake of fact, to the obligor and any other challenging party.

(2) The notice shall inform the obligor or the challenging party of the right to appeal the decision of the Administration to the Office of Administrative Hearings or to the circuit court.

[(j)] (K) If no timely appeal is filed, the Administration shall send a notice to the financial institution, in the manner specified in subsection [(b)] (C) of this section, directing the financial institution to forward the amount specified in the notice, including any revised amount under subsection [(h)(5)] (I)(5) of this section, to the Administration.

[(k)] (L) (1) An appeal to the Office of Administrative Hearings authorized under subsection [(i)] (J) of this section shall be conducted in accordance with Title 10, Subtitle 2 of the State Government Article.

(2) An appeal to the Office of Administrative Hearings shall be:

(i) in writing; and

(ii) received by the Office of Administrative Hearings within 30 days after the notice is sent to the obligor or other challenging party under subsection [(i)] (J) of this section.

[(l)] (M) After the completion of an appeal to the Office of Administrative Hearings authorized under subsection [(i)] (J) of this section, the Administration shall:

(1) send a notice to the financial institution, in the manner specified in subsection [(b)] (C) of this section, directing the financial institution to release the

amount seized and attached by the financial institution if the Office of Administrative Hearings finds that:

(i) there is a mistake of identity;

(ii) the obligor does not have an ownership interest in the contents of any account held; or

(iii) there is no arrearage;

(2) send a notice to the financial institution, in the manner specified in subsection [(b)] (C) of this section, directing the financial institution to release the attachment on any amount in excess of the revised amount stated and that the revised amount stated be forwarded to the Administration if the Office of Administrative Hearings finds that:

(i) the obligor is delinquent, but the amount of the arrearage is less than the amount indicated in the notice under subsection [(b)] (C) of this section or in a subsequent notice under subsection [(h)(5)] (I)(5) of this section; or

(ii) the obligor does not have ownership interest in one or more of the accounts seized and attached or a portion of the accounts; or

(3) send a notice to the financial institution, in the manner specified in subsection [(b)] (C) of this section, directing the financial institution to transfer the amounts seized and attached to the Administration if the Office of Administrative Hearings upholds the determination of the Administration.

[(m)] (N) (1) A challenging party may withdraw an administrative challenge or appeal by submitting a notice of the withdrawal to the person identified as the contact person for the Administration in the notice under subsection [(d)] (E) of this section, or to the Office of Administrative Hearings.

(2) The Administration may withdraw the notice to attach accounts by sending notice to the financial institution, in the manner specified in subsection [(b)] (C) of this section, directing the financial institution to release the attachment on the account.

[(n)] (O) If a determination is made by the Administration or by the Office of Administrative Hearings that the account or accounts of the obligor should not have been held, the Administration shall notify the financial institution, in the manner specified in subsection [(b)] (C) of this section, to release the amount seized and attached by the financial institution.

[(o)] (P) (1) A financial institution that complies with a request or notice from the Administration made under this section is not liable under State law to any person for:

[(1)] (I) any disclosure of information to the Administration under this section;

[(2)] (II) seizing and attaching any amounts from an account, sending any amount seized and attached by the financial institution to the Administration, or releasing all or a part of the amount seized and attached by the financial institution; or

[(3)] (III) any other action taken in good faith to comply with the requirements of this section.

(2) AN INSTITUTION-AFFILIATED PARTY, AS DEFINED IN § 10-108.2(A)(4)(II) AND (V) OF THIS SUBTITLE, IS IMMUNE FROM ANY CIVIL LIABILITY OR CRIMINAL PENALTY FOR ANY ACTION TAKEN UNDER THIS SECTION.

[(p)] (Q) (1) Notwithstanding any other statutory provisions or rules of court that provide for the execution, attachment, garnishment, or levy against an account, and subject to paragraph (2) of this subsection, the Administration may utilize the procedures established in this section exclusively to collect delinquent child support.

(2) This section may not be construed to prohibit the Administration from collecting delinquent child support in any other manner authorized by law.

10-108.4.

(a) If the Administration institutes an action under [§ 10-108.3(a)] § 10-108.3(B) of this subtitle and no obligor has any ownership interest in a seized account at the time the Administration institutes the action, the Administration shall reimburse the account holders of interest for fees incurred as a result of instituting the action, including:

(1) fees assessed by the financial institution as a result of the Administration's action;

(2) fees assessed by the financial institution for insufficient funds;

(3) fees assessed by merchants for dishonored checks; and

(4) reasonable attorney's fees incurred by the account holders of interest related to an administrative or judicial review of the Administration's decision to institute the action.

(b) An account holder of interest who wishes to request reimbursement under this section shall file a written request within 60 days after the account is seized. The request shall include copies of the notices or other proof of the assessment of fees for which reimbursement is sought.

(c) The Administration is not required to reimburse an account holder of interest for fees incurred if:

(1) the account holder of interest fails to make a request for reimbursement within 60 days after the account was seized;

(2) the account holder of interest fails to provide proof of the assessment of fees; or

(3) the fees were incurred as a result of a debit made to the account after the account holder of interest had actual notice of the account seizure.

(d) This section does not apply to fees incurred as a result of a judicial garnishment.

(e) A financial institution has no obligation to reimburse fees assessed as a result of the Administration instituting an action under § 10-108.3 of this subtitle or as otherwise permitted by law or authorized by contract.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act ~~shall take effect July 1, 2003~~ is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.